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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1236

[FDMS No. NARA-18-0003; NARA-2018-058]

RIN 3095-AB98

Electronic records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: We are revising our electronic records management regulation to include standards for digitizing temporary Federal records so that agencies may dispose of the original source records, where appropriate and in accordance with the Federal Records Act amendments of 2014.

DATES: Submit comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this rule, identified by RIN 3095-AB98, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* Regulation_comments@nara.gov. Include RIN 3095-AB98 in the subject line of the message.
- *Mail (for paper, disk, or CD-ROM submissions):* Send comments to: Regulation Comments Desk (External Policy Program, Strategy & Performance Division (MP)); Suite 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740-

6001.

Hand delivery or courier: Deliver comments to front desk at 8601 Adelphi Road, College Park, MD, addressed to: Regulations Comments Desk, External Policy Program; Suite 4100.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, by email at regulation_comments@nara.gov, or by telephone at 301-837-3151. Contact acps@nara.gov with any questions on records management and digitization.

SUPPLEMENTARY INFORMATION:

Background

In 2014, the Federal Records Act at 44 U.S.C. § 3302 was amended by Public Law 113-87 to require NARA to issue standards for reproducing records digitally ‘with a view toward the disposal of original records.’ The amendment applies to both temporary and permanent records. This rule proposes standards for temporary records so that agencies may establish appropriate processes for digitizing temporary records. Temporary records constitute the majority of Federal records; agencies retain them for a specific period of time, as established by records schedules. At the end of the scheduled retention period, temporary records are then destroyed. Digitization standards for temporary records ensure that agencies can continue to use the digital versions for the same purposes as the original records for the duration of that time period.

This rule would provide agencies with guidance necessary to proceed with significant digitization and destruction projects for temporary records. We are currently developing standards for digitizing permanent records, which we will publish as a separate rulemaking. Until these standards are published as a final rule, we recommend that agencies discuss digitization projects with their general counsel before disposing of original records

While we develop the standards necessary for digitizing permanent Federal records, agencies should continue to follow the process in the General Records Schedule, 36 CFR § 1225.24, and NARA Bulletin 2010-04, Guidance Concerning Notifications for Previously Scheduled Permanent Records (<https://www.archives.gov/records-mgmt/bulletins/2010/2010-04.html>). In addition to issuing digitization standards for temporary records, we are also removing 36 CFR § 1236.1 because it restates the authorities already cited in the authority line. We are also working on revisions to the rest of this regulation regarding electronic records management, but those revisions will be reflected in future rulemakings.

Regulatory review information

This rule is not a significant regulatory action for the purposes of E.O. 12866 and a significance determination was requested from the Office of Management and Budget (OMB). As a result, this rule is also not subject to deregulatory requirements contained in E.O. 13771. It is also not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking. As required by the Regulatory Flexibility Act, we certify that this rule will not have a significant impact on a substantial number of small entities; it applies only to agency efforts to digitize temporary records. This rule also does not have any Federalism implications and does not contain any collections of information under the Paperwork Reduction Act.

List of Subjects in 36 CFR Part 1236

Archives and records.

For the reasons stated in the preamble, NARA amends 36 CFR part 1236 as follows:

1. Revise the authority citation for part 1236 to read as follows:

Authority: 44 U.S.C. 2904, 3101, 3102, 3105, 3301, 3302, and 3312.

2. Revise the table of contents by:

- a. Removing the entry for 1236.1, What are the authorities for part 1236?, and
- b. Adding a new Subpart D to read as follows:

Subpart D – Digitizing Federal Records

1236.30 Digitizing temporary records

- (a) Agencies must apply the following standards when digitally reproducing (digitizing) temporary records in order to destroy the original source records.
- (b) When digitizing temporary records, agencies must:
 - (1) Capture all information contained in the source records;
 - (2) Include all the pages or parts in the source records;
 - (3) Ensure they can use the digital versions for the purposes the source records served; and
 - (4) Ensure they can locate, retrieve, access, and use the digital versions for the records' entire retention period.
- (c) Agencies must validate that the digital versions meet the standards in subparagraph (b).

When an agency has validated that the digital versions meet these standards, the agency can destroy the original source records pursuant to a NARA-approved GRS and agency-specific records schedule.

DAVID S. FERRIERO

Archivist of the United States.

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